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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/434,845	11/04/1999	FRANK G. BORDONARO	2705-87	4448
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MARGER JOHNSON & MCCOLLOM PC 1030 SW MORRISON STREET PORTLAND, OR 97205			EXAMINER	
			JONES, PRENELL P	
			ART UNIT	PAPER NUMBER
			2667	
DATE MAILED: 09/04/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/434,845

Applicant(s)

Bordonaro et al

Examiner

Prenell Jones

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Jun 30, 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-32 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 11-20 and 24-29 is/are allowed.

6) Claim(s) 1-4, 21, 30, and 32 is/are rejected.

7) Claim(s) 5-10, 22, 23, and 31 is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

6) Other: _____

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Response to Arguments

1. Applicant's arguments with respect to claims 1-32 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 U.S.C. § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Beigi et al.

Regarding claims 1 and 4, Beigi discloses monitoring of an IP network including performance measurement, (col. 3, lines 21-22) sending time of day indication (STOP), UDP packet with a

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local time stamp, (col. 7, lines 33-34) receive time of day at receiver (RTOP) for calculating transmission delay, echoing the probe packet to the sender (col. 7, lines 27-29, reflecting back to the source), comparing the sequence number to measure data packet loss (col. 3, lines 25-28), probe number along with first and second number shows sequence number, predefined protocol is UDP, and dedicated assurance software residing at the access nodes is the probe analyzing software (col. 4, lines 15-36 and col. 6, lines 14-22).

4. Claims 21, 30 and 32 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Gruber et al.

Regarding claims 21, 30 and 32, Gruber discloses (Abstract, col.1, line 25) a method of measuring network performance comprising receiving at a given network address (net address of node B) one or more performance probe data packets (Figs. 1 and 2), transmitted from a sender node address (net address of node A), each performance probe data packet having a defined receive time of day field therein (col. 8, lines 58-64) modifying the data packet to produce one or more modified performance data packets (col. 4, lines 65 thru col. 5, line 20), and with respect to claim 21, Gruber further discloses a send time (i.e.T1).

Claim Rejections - 35 U.S.C. § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be

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patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beigi et al in view of Gruber et al and

Regarding claims 2 and 3, Beigi discloses monitoring of an IP network including performance measurement, (col. 3, lines 21-22) sending time of day indication (STOP), UDP packet with a local time stamp, (col. 7, lines 33-34) receive time of day at receiver (RTOP) for calculating transmission delay, echoing the probe packet to the sender (col. 7, lines 27-29, reflecting back to the source), comparing the sequence number to measure data packet loss (col. 3, lines 25-28), probe number along with first and second number shows sequence number, predefined protocol is UDP, and dedicated assurance software residing at the access nodes is the probe analyzing

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software (col. 4, lines 15-36 and col. 6, lines 14-22). Beigi is silent on modifying data packets.

In analogous art, Gruber discloses (Abstract, col.1, line 25) a method of measuring network performance comprising receiving at a given network address (net address of node B) one or more performance probe data packets (Figs. 1 and 2), transmitted from a sender node address (net address of node A), each performance probe data packet having a defined receive time of day field therein (col. 8, lines 58-64) modifying the data packet to produce one or more modified performance data packets (col. 4, lines 65 thru col. 5, line 20), and with respect to claim 21, Gruber further discloses a send time (i.e.T1). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have been motivated to implement modifying data packets to produce one or more modified performance data packets as taught by Gruber with the teachings of Beigi for the purpose of processing delays associated in an Internet working communication environment.

Allowable Subject Matter

7. Claims 11-20 and 24-29 are allowed over prior art.

Regarding claim 11, the limitation, “echoing the probe data packet by transmitting the modified packet back to sender software program, sender software program further determining a difference between the receive time of day stamp and send time of day stamp, whereby determined difference represents data packet transmission timing through the network” is absent from the art. Claims 12-15 depend on 11, therefore, claims 12 and 15 are allowed as well.

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Regarding claim 16, the limitation “placing in the receive-time sub-field the receive-time of day (RTOD) at the responder network address, echoing the data packet including the probe field at a respondent network, repeating the generating, first placing, sending, receiving, second placing, and echoing steps for second data packet, calculating packet jitter based on the STOD and RTOD sub-fields for the first/second data packets” is absent from the art.

Regarding claim 17, the limitation, "placing in a send sequence number sub-field a send sequence number representing a relative send timing indicator, placing in a receive sequence number sub-field a relative receive timing indicator" is absent from the art

Regarding claim 18, the limitation “instructions for generating one or more performance probe data packets wherein each performance probe data packet being dedicated to network performance measurement, each data packet containing one or more defined timing and sequencing parameters including send time of day, receive time of day, send sequence number and receive sequence number, and analyzing a response from the software resident at the respondent address in accordance with the predefined protocol with respect to the one or more defined timing and sequencing parameters to measure the performance of the network” is absent from the art. Claims 19 and 20 depend on claim 18, therefore, claims 19 and 20 are allowed as well.

Regarding claim 24, the limitation “sender determining the difference between the RTOD stamp and STOD stamp, whereby the determined difference represents data packet transmission through the network” is absent from the art. Claims 25-29 depend on claim 24, therefore, claims 25-29 are allowed as well.

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Claims 5-10, 22, 23 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Regarding claims 5-10, 22 and 23, the limitation "instructions executed at the receiver for writing into the timing probe data packet," and regarding claim 31, the limitation, "wherein modifying is performed by further placing in the defined delta time field data substantially representative of an amount of time elapsed while performing modifying and echoing of the corresponding performance probe data packet" is absent from the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prenell Jones whose telephone number is (703) 305-0630. The examiner can normally be reached on Monday thru Friday from 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham, can be reached on (703) 305-4378. The fax phone number for the organization where this application or proceeding is assigned is (703) 873-9314

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Prenell Jones

August 27, 2003


CHI PHAM
SUPERVISORY PATENT EXAMINER
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